Member’s Guide to
National Consumer Laws
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Adopted March 2011

On 1 January 2011 the Australian Consumer Law (ACL) commenced and replaced all state and territory consumer laws. A single national set of laws now exist which set out consumer rights and business obligations when selling goods and services.

The ACL is set out in Schedule 2 of the Competition and Consumer Act 2010 which is the new name of the Trade Practices Act 1974 (TPA). A copy can be located here “www.consumerlaw.gov.au.”

The ACL applies to all business sectors, including optometry. It covers general standards of business conduct, prohibits harmful practices, regulates specific types of business-to-consumer transactions, provides basic consumer rights for goods and services and regulates the safety of consumer products and product-related services.

Enforcement and administration of the ACL will be undertaken by the Australian Competition and Consumer Commission (ACCC), the Australian Securities and Investment Commission (ASIC) and each State and Territory’s consumer agency.

These new laws are relatively detailed. This guide provides a handy checklist covering major issues as well as some Frequently Asked Questions.

Further information can be obtained from the Association on 03 9668 8500.
Attachment 2 also provides reference for additional information.
1. Checklist for compliance
   1.1 Ads and representations to customers 2
   1.2 Pricing 2
   1.3 Proof of transactions and itemised bills 3
   1.4 Consumer guarantees and warranties 4
   Consumer remedies 4
   1.5 Major failure of a good 4
   1.6 Minor failure 5

2. Commonly Asked Questions 6
   2.1 Repairs and spare parts – who is responsible? 6
   2.2 Who is responsible for fixing a problem with goods? 6
   2.3 Who decides whether a refund, repair, replacement or other compensation is provided? 7
   2.4 What if repairs cannot be undertaken? 8
   2.5 When the consumer takes goods elsewhere for repair 9

Attachment One
   Definitions 10

Attachment Two
   Model Refund Sign, as adapted from Vic Department of Consumer Affairs 11

Attachment Three
   Where to go for additional information 12
1.1 Ads and representations to customers

Section 18 and 19; s 29-38 and s 151-160 of the Australian Consumer Law (ACL)

☐ Make sure your advertisements or representations made to customers are not misleading or deceptive or would be likely to mislead or deceive
  • eg a court has found that a retailer was guilty of false and misleading representations as they had placed a tag on a product with a sale price and a higher crossed out price. The product had never sold for the higher price. \(^1\)

☐ Future predictions or opinions will break the law if, when they are made, you knew they were false or do not care if they were true or not or you had no reasonable grounds for making them.

☐ It is unlawful to make false or misleading statements about consumer guarantees (see later section).
  • Eg you cannot place a sign saying ‘no refund on sale items’.
  • Eg you can say ‘no refunds will be given if you have simply changed your mind’
  • Attachment Two contains a sample refund policy for optometrists to consider

1.2 Pricing

Sections 47-48; 165-166 ACL.

☐ **Multiple pricing:** If you use an advertisement or labels with multiple prices for the same goods you must:
  > sell the goods for the lowest ‘displayed price’ OR
  > withdraw the goods from sale until the price is corrected.

A price published in a catalogue or advertisement is a ‘displayed price’.

Mistakes in catalogues and advertisements can be fixed by publishing a retraction in a publication with a similar circulation to the original advertisement.

☐ **Component pricing:** You must not promote or state a price that is only part of the cost, unless also prominently advertising the single price.

The single price is the total of all measurable costs and includes:
  > any charge payable, and
  > the amount of any tax, duty, fee, levy or charges (for example, GST).

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\(^1\) TPC v Cue Design Pty Ltd (1096) A Crim R 500; ATPR 41-475.
1.3 Proof of transactions and itemised bills

Section 100 ACL.

☐ You must provide proof of transaction to consumers for goods or services valued at $75 or more as soon as possible after the transaction. A GST tax invoice is sufficient proof of transaction.

☐ A customer can ask for proof of transaction for goods and services less than $75 and this must be provided within 7 days.

‘Proof of transaction’ for supply of goods or services to a consumer is a document that states the:

> supplier of the goods or services
> supplier’s ABN, if they have one
> supplier’s ACN, if they have one but do not have an ABN
> date of the supply
> goods or services supplied to the consumer, and
> price of the goods or services.

Examples of proof of transaction:

> GST tax invoice
> cash register receipt
> credit card or debit card statement
> handwritten receipt
> lay-by agreement, or
> confirmation or receipt number provided for a telephone or internet transaction.

☐ Consumers may request an itemised bill. An optometrist must give the consumer the itemised bill, without charge, within seven days of the request. It must be expressed in plain language, legible and clear.

The request can seek:

> how the price was calculated
> the number of labour hours and the hourly rate (if relevant), and
> a list of the materials used and the amount charged for them (if relevant).

This request must be made within 30 days of whichever happens later:

> the services are supplied, or
> the consumer receives a bill or account from the supplier for the supply of the services.
1.4  Consumer guarantees and warranties  
Division 1 of Part 3-2 of ACL

☐ Make sure you are still abiding by the same consumer guarantees as you were prior to 1 January 2011. The new law clearly states these consumer guarantees.

As a supplier\(^2\), an optometrist guarantees that a consumer is buying goods:

- must be of acceptable quality – that a reasonable consumer would expect (are safe, durable and free from defects, acceptable in appearance and finish and do all the things that the goods are ordinarily used for, taking into account the nature and price of the goods, and any statement made about them on packaging or labelling)
- match any description given
- match any sample or demonstration shown
- be fit for any disclosed purpose
- come with clear title (ie not owned by anyone else)
- be free from undisclosed securities and charges (not usually relevant for optometry goods)
- consumers must have undisturbed possession
- sellers, manufacturers and importers must honour express (additional) warranties
- manufacturers/importers must make spare parts and repair facilities reasonably available for a reasonable time\(^3\)

As a provider of optometry services, an optometrist guarantees that services are:

- provided with due care and skill
- fit for any disclosed purpose
- provided in a reasonable time where not time is agreed

Consumer remedies

Part 5-4 ACL for remedies available to consumers if a good or service fails to meet a guarantee.

☐ There are a variety of remedies available if a good or service fails to meet a guarantee. As a supplier and possibility a manufacturer, you have obligations to the consumer if guarantees are breached. The remedy will depend on whether it is a major failure or minor failure.

1.5 Major failure of a good

As a supplier of goods, if there is a major failure\(^4\), a consumer can:

- reject the goods and get a refund
- reject the goods and get an identical replacement, or one of similar value if reasonably available, or

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\(^2\) A supplier is anyone – including a trader, a retailer or a service provider – who, in trade or commerce, sells goods or services to a consumer. 
\(^3\) A manufacturer is a person or business that makes or puts goods together or has their name on the goods. It includes the importer, if the maker does not have an office in Australia. 
\(^4\) A major failure is where:
- a reasonable consumer would not have bought the goods if they had known about the problem.
- the goods are significantly different from the description, sample or demonstration model shown to the consumer.
- the goods are substantially unfit for their normal purpose and cannot easily be made fit, within a reasonable time.
- the goods are substantially unfit for a purpose that the consumer told the supplier about, and cannot easily be made fit within a reasonable time.
- the goods are unsafe.
1. CHECKLIST FOR COMPLIANCE

> keep the goods and get compensation for the drop in value caused by the problem.

The consumer gets to choose, not you as supplier.

1.6 Minor failure

If there is a minor failure, and the good can be repaired within a reasonable time, the consumer cannot reject the goods and demand a refund. They can ask you to fix the problem. You may choose to:

> provide a refund
> replace the goods
> fix the title to the goods, if this is the problem
> repair the goods.

☐ If you cannot repair the goods, the consumer is entitled to get it repaired elsewhere OR reject the goods and seek either a refund or replacement from you.

☐ If the consumer takes it elsewhere for the repair, your approval is not required nor do they need to get quotes for you to approve. However you need only pay the ‘reasonable cost’ of repair.

A reasonable cost would be within the normal range charged by repairers of such goods, and include:

> the cost of the repair
> any other associated costs incurred by having the goods fixed elsewhere, such as transport costs.
New national consumer guarantees provisions, which will replace statutory implied conditions and warranties have come into effect from 1 January 2011 (Chapter 3, Part 3-2, Division 1).

2.1 Repairs and spare parts – who is responsible?

Manufacturers (not suppliers) guarantee to take reasonable steps to provide spare parts and repair facilities - a place that can fix the consumer’s goods - for a reasonable time after purchase. If the manufacturer does not have an office in Australia, the importer takes on these responsibilities.

For example:
A consumer drops his spectacles and breaks one of the arms in half, which he bought new a year ago. He contacts the importer or manufacturer and asks where he can get it repaired. The importer/manufacturer advises they no longer supply parts for that model of spectacles.

A reasonable consumer would expect a pair of spectacles only one year old to be repairable. The manufacturer has not taken reasonable steps to provide spare parts or facilities.

NB A manufacturer does not have to meet the guarantee on repairs and spare parts if they advised the consumer in writing, at or before the time of purchase, that repair facilities and spare parts would not be available after a specified time.

2.2 Who is responsible for fixing a problem with goods?

When goods fail to meet a guarantee, a consumer has a right to a ‘remedy’ - an attempt to put the situation right. Common remedies include repair, replacement, or to take action against the supplier for refund, compensation or damages.

Responsibility of the optometrist

The supplier (as the retail seller) has to provide the remedy when goods do not meet the following consumer guarantees:

- fit for any disclosed purpose
- clear title
- undisturbed possession
- undisclosed securities
- failure to match sample or demonstration model.

The manufacturer (of the spectacles or contact lenses) has to provide the remedy when repairs or spare parts are not available for a reasonable time after purchase.

The manufacturer is the person or business who:

- made the goods
- put the goods together
- has their name or brand on the goods, or
- imported the goods, if the maker does not have an office in Australia.
2. COMMONLY ASKED QUESTIONS

The consumer can claim from the manufacturer or the supplier if goods:

- are not of acceptable quality
- do not match description
- do not meet any extra promises made about them (express warranties).

Whether the consumer is entitled to a repair, replacement, refund or other ‘remedy’ depends on whether the problem is a ‘major’ failure or a ‘minor’ failure.

Consumer guarantees apply to both. When goods fail to meet a consumer guarantee, the consumer may also bring an action for ‘consequential losses’ – compensation for their costs in time and money because something went wrong. One would expect that this sort of consumer action would not occur regularly in optometry.

2.3 Who decides whether a refund, repair, replacement or other compensation is provided?

Handling major problems with goods

For a major failure with goods, the consumer can:

- reject the goods and get a refund
- reject the goods and get an identical replacement or one of similar make/model or value if reasonably available, or
- keep the goods and take action against the supplier for compensation for the drop in value caused by the problem.

The consumer gets to choose which ‘remedy’ they prefer, not the supplier (optometrist) or manufacturer.

What is a ‘major’ failure?

A major failure with goods is when:

- a reasonable consumer would not have bought the goods if they had known about the problem. For example, no reasonable consumer would buy a pair of spectacles if they knew the frame was going to break after three months
- the goods are significantly different from the description, sample or demonstration model shown to the consumer. For example, a consumer orders a red pair of spectacles from a catalogue, but the spectacles delivered are green
- the goods are substantially unfit for their normal purpose and cannot easily be made fit, within a reasonable time
- the goods are substantially unfit for a purpose that the consumer expressly told the optometrist about, and cannot easily be made fit within a reasonable time. For example, swimming goggles were ordered with prescription lenses and the goggles end up not being waterproof
- the goods are unsafe.
2. COMMONLY ASKED QUESTIONS

Handling minor problems with goods
If the problem is not major and can be repaired within a reasonable time, the consumer cannot reject the goods and demand a refund.

They can ask the optometrist to fix the problem. The optometrist may choose to:

- provide a refund
- replace the goods
- fix the title to the goods, if this is the problem
- repair the goods. It is the supplier’s responsibility to return goods to the manufacturer for repair. If the cost of repairing the goods is more than the value of the goods, the supplier can offer the consumer a replacement instead.

When the consumer chooses a refund
The optometrist must repay any money paid by the consumer for the returned goods.

Consumer law does not allow optometrists to:

- offer a credit note, exchange card or replacement goods instead of a refund. A consumer cannot accept this kind of offer
- refuse a refund, or reduce the amount, because the goods were not returned in original packaging or wrapping.

Replacements
The optometrist must provide goods of the same type and similar value. If such a replacement is not reasonably available, the consumer may choose a repair or a refund. The consumer must return goods to the optometrist.

2.4 What happens if repairs cannot be undertaken?
If an optometrist cannot repair the goods - for instance, because they do not have parts - or cannot do so within a reasonable time, the consumer can either:

- reject the goods and seek either a refund or replacement, or
- have the goods fixed elsewhere and claim reasonable costs from the supplier.

What is ‘reasonable’ will depend on the circumstances.

If an optometrist refuses or takes more than a reasonable time to repair the goods, the consumer can:

- take the goods elsewhere to be fixed and ask the supplier to pay the reasonable costs of this repair
- reject the goods and ask for a refund, or
- reject the goods and ask for a replacement, if one is reasonably available.
2. COMMONLY ASKED QUESTIONS

2.5 When the consumer takes goods elsewhere for repair

If the consumer has no option but to take goods elsewhere for repair, they do not have to get the supplier’s agreement or provide quotes. However, the supplier only has to pay the ‘reasonable costs’ of repair.

A reasonable cost would be within the normal range charged by repairers of such goods and include:

• the cost of the repair
• any other associated costs incurred by having the goods fixed elsewhere, such as transport costs.

For example:
The arm on a pair spectacles break after one week. The retailer tells the consumer the repair will take a month. The consumer explains he needs the spectacles for work urgently but the retailer offers no other option. The consumer gets the arm repaired by another retailer for $25. When the consumer asks the retailer to pay for this, the retailer says that their tailor would have done it for $20. If the higher price is a normal price for a retailer to fix the spectacles, the retailer would have to reimburse the consumer.
## Attachment One: Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>consumer</td>
<td>a person who buys:</td>
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<tr>
<td></td>
<td>&gt; any type of goods or services costing up to $40,000 (or any other amount stated in the ACL Regulations)</td>
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<tr>
<td></td>
<td>&gt; goods or services costing more than $40,000, which would normally be for personal, domestic or household use, or</td>
</tr>
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<td></td>
<td>&gt; goods which consist of a vehicle or trailer used mainly to transport goods on public roads.</td>
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<tr>
<td>goods</td>
<td>Include spectacles, lenses, coatings, contact lenses, cleaning solutions, cases, among other things:</td>
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<tr>
<td></td>
<td>&gt; second-hand goods</td>
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<tr>
<td></td>
<td>&gt; any component part of, or accessory to, goods.</td>
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<tr>
<td>manufacturer</td>
<td>includes a person who:</td>
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<tr>
<td></td>
<td>&gt; produces, processes or assembles goods</td>
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<td></td>
<td>&gt; holds him/herself out to the public as the manufacturer of goods</td>
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<tr>
<td></td>
<td>&gt; causes or permits his/her name, business name or brand mark to be applied</td>
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<tr>
<td></td>
<td>&gt; to goods he/she supplies</td>
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<tr>
<td></td>
<td>&gt; permits him/herself to be held out as the manufacturer by another person, or</td>
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<tr>
<td></td>
<td>&gt; imports goods into Australia where the manufacturer of the goods does not have a place of business in Australia.</td>
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<tr>
<td>services</td>
<td>duties, work, facilities, rights or benefits provided in the course of business. For example:</td>
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<td></td>
<td>&gt; optometry services</td>
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<td></td>
<td>&gt; dispensing services</td>
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<tr>
<td>supplier</td>
<td>someone who, in trade or commerce, sells goods or services and is commonly referred to as a ‘trader’, ‘retailer’ or ‘service provider.’</td>
</tr>
<tr>
<td>supply</td>
<td>includes:</td>
</tr>
<tr>
<td></td>
<td>&gt; in relation to goods – supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase, and</td>
</tr>
<tr>
<td></td>
<td>&gt; in relation to services – provide, grant or confer.</td>
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</tbody>
</table>
## Refund policy

We are not required to provide a refund or replacement if you change your mind.

But you can choose a refund or exchange if an item has a major problem. This is when the item:

- has a problem that would have stopped someone from buying the item if they had known about it
- is unsafe
- is significantly different from the sample or description
- doesn’t do what we said it would, or what you asked for and can’t be easily fixed.

Alternatively, you can choose to keep the item and we will compensate you for any drop in value.

If the problem is not major, we will repair the item within a reasonable time. If it is not repaired in a reasonable time you can choose a refund or replacement.

Please keep your proof of purchase—e.g. your receipt.
Attachment Three: Where to go for additional information

The Treasury has provided 6 information guides in the following areas:

**Avoiding unfair business practices**

The [Avoiding unfair business practices guide](#) covers misleading or deceptive conduct, unconscionable conduct, false or misleading representations and related offences, information standards and country of origin representations.

**Consumer guarantees**

The [Consumer guarantees guide](#) covers what consumer guarantees apply to goods and services, who is responsible for these guarantees and when remedies, such as refund repair and replacement are available. For further information and resources about consumer guarantees, visit the [ACCC website](#).

**Product safety**


**Sales practices**

The [Sales practices guide](#) covers unsolicited supplies, unsolicited consumer agreements, pyramid schemes, multiple pricing, lay-by agreements, referral selling and harassment and coercion.

**Unfair contract terms**

The unfair contract terms law commenced on 1 July 2010 nationally and in Victoria and New South Wales and all other States and Territories from 1 January 2011. A [Guide to the Unfair Contract Terms Law](#) has been produced by ACCC and ASIC to provide guidance in this area.

**Compliance and enforcement**

The [Compliance and enforcement guide](#) sets out the principles that guide the compliance and enforcement approach of the ACCC, ASIC and the State and Territory consumer protection agencies in administering the ACL.

Information can also be obtained from each state and territory state consumer affairs department.

Contact details can be found here: